

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1383V

Filed: September 20, 2023

MICHELLE TVERBERG,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Horner

David John Carney, Green & Schafle LLC, Philadelphia, PA, for petitioner.

Joseph Douglas Leavitt, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On October 13, 2020, Michelle Tverberg (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”). (ECF No. 1)

On September 19, 2023, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. (ECF No. 45.) On September 20, 2023, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$120,000.00. (ECF No. 47.) In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award petitioner a lump sum payment of \$120,000.00, representing compensation for pain and suffering,**

¹ Because this document contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the document will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Daniel T. Horner

Daniel T. Horner
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MICHELLE TVERBERG,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 20-1383V (ECF)
Special Master Horner

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On October 13, 2020, Michelle Tverberg (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”), 42 U.S.C. §§ 300aa-1 to -34, alleging that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine that she received on October 26, 2017. ECF No. 1 at 1. On August 21, 2023, respondent filed an Amended Rule 4(c) Report, recommending that this Court enter a ruling finding petitioner entitled to compensation. *See* ECF No. 42 at 8. On September 19, 2023, Special Master Horner issued a Ruling on Entitlement, finding that petitioner was “entitled to compensation for a Table injury of SIRVA.” ECF No. 45 at 2.

I. Items of Compensation

a. Pain and Suffering

Respondent proffers that petitioner should be awarded \$120,000.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees that this resolves all alleged injuries and damages.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Special Master's decision and the Court's judgment award the following:¹ a lump sum payment of \$120,000.00, in the form of a check payable to petitioner.

III. Summary of Recommended Payment Following Judgment

Lump sum payable to petitioner, Michelle Tverberg: **\$120,000.00**

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

/s/ Joseph Leavitt
JOSEPH D. LEAVITT
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Ben Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 616-0515
Email: joseph.leavitt@usdoj.gov

Dated: September 20, 2023